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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,698	11/12/2003	Bary Wilkinson	9342-1	9231

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/712,698

Applicant(s)

WILKINSON, BARY

Examiner

Yvonne R. Abbott

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 and 4, the word "means" is preceded by the word(s) "aperture" (claim 1) and "one-way valve" (claim 4) in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Wilkeson (4,543,913). Wilkeson discloses a liquid dispenser and grooming tool for animals comprising a reservoir (14) for holding a supply of said liquid scalp medicine, a plurality of hollow tines (27) carried by said reservoir, said hollow tines having passageways of uniform cross-section in fluid contact with said reservoir, a resilient, flexible and closed tip (28) at the end of each of said hollow tines, and an adjustable aperture (29) formed in or near each of said tips for adjusting the amount of said liquid scalp medicine that flows through said aperture means in response to pressure applied by said tip against the scalp, wherein said aperture means includes a slit formed in said tip extending completely through one wall of said tip and wherein said adjustable aperture means closes when no pressure is applied by said tip against the scalp, thereby stopping the flow of said liquid scalp medicine (Abstract; col. 5, lines 2-9).

5. Claim 6 is rejected under 35 U.S.C. 102(e) as being anticipated by Clement Marco (6,378,529). Clement Marco shows an applicator for liquid scalp medicine, comprising a reservoir (3) for holding a supply of said liquid scalp medicine, a plurality of hollow tines (2) carried by said reservoir, said hollow tines having passageways in fluid contact via channel (5) with said reservoir, a resilient, flexible and closed tip at the end of each of said hollow tines, and each of said hollow tines has a passageway of uniform cross-section, said passageway extending through said open tip of each tine, said passageway being sized to facilitate capillary flow (Fig. 7) through it by said liquid scalp medicine (col. 4, lines 4-9).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkeson. Although the slit in the tine of Wilkeson is shown to be oriented at an angle, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that dispensing tines such as Wilkeson have slits parallel and transverse to the longitudinal axis of the tine as well depending upon the viscosity of the fluid to be dispensed, the degree of flow regulation desired, or to create a desired application pattern.

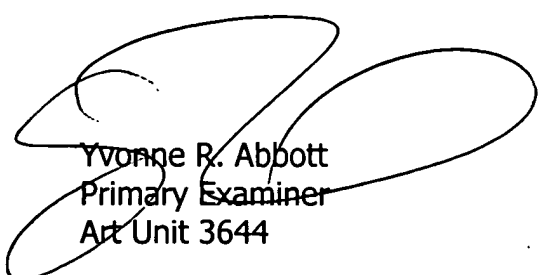
8. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkeson in view of Holland (4,617,875). Although Wilkeson discloses a liquid applicator having a reservoir for containing the liquid to be applied, it does not disclose a one-way valve. Holland teaches a grooming and treatment applicator having a one way valve (64). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the Wilkeson dispenser have a one-way valve so that air may flow into the reservoir thereby increasing the pressure on the liquid so that the rate of flow of liquid through dispensing tubes may be adjusted by adjusting the amount of pressure within said reservoir, thereby facilitating the flow of

treatment material through the tines and as taught by Holland. With respect to claim 5, what constitutes "a single dose" is considered relative, and disclosed by Wilkeson in terms of the amount capable of being held by the dispenser.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on Mon-Thurs 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (703)305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
Art Unit 3644

9/28/04